

**STATE OFFICE OF EDUCATION HUMAN
RESOURCE MANAGEMENT AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah State Personnel Management Act to exempt employees of the State Board of Education from overtime, classified service, and career service provisions administered by the Department of Human Resource Management and requires the State Board of Education to adopt human resource policies and procedures for its employees.

Highlighted Provisions:

This bill:

- requires the State Board of Education to adopt human resource policies and procedures governing its employees;
- exempts all employees instead of only certified employees of the State Board of Education from overtime provisions administered by the Department of Human Resource Management;
- exempts all employees instead of only certified employees of the State Board of Education from classified service provisions administered by the Department of Human Resource Management; and
- exempts employees of the State Board of Education from career service provisions administered by the Department of Human Resource Management.

Monies Appropriated in this Bill:



None

Other Special Clauses:

This bill takes effect on July 1, 2008.

Utah Code Sections Affected:

AMENDS:

53A-1-401, as last amended by Laws of Utah 2005, First Special Session, Chapter 2

67-19-6.7, as last amended by Laws of Utah 2006, Chapter 139

67-19-12, as last amended by Laws of Utah 2007, Chapter 166

67-19-15, as last amended by Laws of Utah 2007, Chapters 34, and 166

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53A-1-401** is amended to read:

53A-1-401. Powers of State Board of Education -- Adoption of rules --

Enforcement.

(1) (a) The State Board of Education has general control and supervision of the state's public education system.

(b) "General control and supervision" as used in Article X, Sec. 3, of the Utah Constitution means directed to the whole system.

(2) The board may not govern, manage, or operate school districts, institutions, and programs, unless granted that authority by statute.

(3) The board may adopt rules and policies in accordance with its responsibilities under the constitution and state laws, and may interrupt disbursements of state aid to any district [which] that fails to comply with rules adopted in accordance with this Subsection (3).

(4) (a) The board may sell any interest it holds in real property upon a finding by the board that the property interest is surplus.

(b) The board may use the money it receives from a sale under Subsection (4)(a) for capital improvements, equipment, or materials, but not for personnel or ongoing costs.

(c) If the property interest under Subsection (4)(a) was held for the benefit of an agency or institution administered by the board, the money may only be used for purposes related to the agency or institution.

(d) The board shall advise the Legislature of any sale under Subsection (4)(a) and

related matters during the next following session of the Legislature.

(5) The board shall develop policies and procedures related to federal educational programs in accordance with Title 53A, Chapter 1, Part 9, Implementing Federal Programs Act.

(6) The board shall adopt human resource policies and procedures governing its employees.

Section 2. Section **67-19-6.7** is amended to read:

67-19-6.7. Overtime policies for state employees.

(1) As used in this section:

(a) "Accrued overtime hours" means:

(i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end of the fiscal year, have not been paid and have not been taken as time off by the nonexempt state employee who accrued them; and

(ii) for exempt employees, overtime hours earned during an overtime year.

(b) "Appointed official" means:

(i) ~~[each]~~ a department executive director ~~[and]~~ or deputy director, ~~[each]~~ a division director, ~~[and each]~~ or a member of a board or commission; and

(ii) any other person employed by a department who is appointed by, or whose appointment is required by law to be approved by, the governor and who:

(A) is paid a salary by the state; and

(B) who exercises managerial, policy-making, or advisory responsibility.

(c) "Department" means the Department of Administrative Services, the Department of Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage Control, the Insurance Department, the Public Service Commission, the Labor Commission, the Department of Agriculture and Food, the Department of Human Services, ~~[the State Board of Education,]~~ the Department of Natural Resources, the Department of Technology Services, the Department of Transportation, the Department of Commerce, the Department of Workforce Services, the State Tax Commission, the Department of Community and Culture, the Department of Health, the National Guard, the Department of Environmental Quality, the Department of Public Safety, the Department of Human Resource Management, the Commission on Criminal and Juvenile Justice, ~~[all]~~ merit employees ~~[except attorneys]~~ in the

Office of the Attorney General except attorneys, merit employees in the Office of the State Treasurer, and merit employees in the Office of the State Auditor.

(d) "Elected official" means ~~[any]~~ a person who is an employee of the state because ~~[he]~~ the person was elected by the registered voters of Utah to a position in state government.

(e) "Exempt employee" means a state employee who is exempt as defined by the Fair Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq.

(f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq.

(g) "FLSA agreement" means the agreement authorized by the Fair Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq., by which a nonexempt employee elects the form of compensation ~~[he]~~ the nonexempt employee will receive for overtime.

(h) "Nonexempt employee" means a state employee who is nonexempt as defined by the Department of Human Resource Management applying FLSA requirements.

(i) "Overtime" means actual time worked in excess of the employee's defined work period.

(j) "Overtime year" means the year determined by a department under Subsection (4)(b) at the end of which an exempt employee's accrued overtime lapses.

(k) (i) "State employee" means ~~[every]~~ a person employed by a department who is not an appointed official or an elected official.

(ii) "State employee" does not mean ~~[(A) certificated employees of the State Board of Education; and (B) employees]~~ an employee of the Department of Community and Culture or the Governor's Office of Economic Development, whose ~~[positions are]~~ position is designated as ~~[schedule AM]~~ exempt [employees] from career service provisions under Schedule AM of Section 67-19-15.

(l) "Uniform annual date" means the date when an exempt employee's accrued overtime lapses.

(m) "Work period" means:

(i) for ~~[all]~~ a nonexempt ~~[employees]~~ employee, except a law enforcement ~~[and]~~ or hospital ~~[employees]~~ employee, a consecutive seven day 24 hour work period of 40 hours;

(ii) for ~~[all]~~ an exempt ~~[employees]~~ employee, a 14 day, 80 hour payroll cycle; and

(iii) for a nonexempt law enforcement ~~[and]~~ or hospital ~~[employees]~~ employee, the period established by ~~[each]~~ the employee's department by rule for ~~[those employees]~~ that

121 employee according to the requirements of the Fair Labor Standards Act of 1978, 29 U.S.C.
122 Section 201 et seq.

123 (2) [~~Each~~] A department shall compensate [~~each~~] a state employee who works overtime
124 by complying with the requirements of this section.

125 (3) (a) [~~Each~~] A department shall negotiate and obtain a signed FLSA agreement from
126 [~~each~~] a nonexempt employee.

127 (b) In the FLSA agreement, the nonexempt employee shall elect either to be
128 compensated for overtime by:

129 (i) taking time off work at the rate of one and one-half hour off for each overtime hour
130 worked; or

131 (ii) being paid for the overtime worked at the rate of one and one-half times the rate per
132 hour that the state employee receives for nonovertime work.

133 (c) [~~Any~~] A nonexempt employee who elects to take time off under this Subsection (3)
134 shall be paid for [~~any~~] overtime worked in excess of the cap established by the Department of
135 Human Resource Management.

136 (d) Before working [~~any~~] overtime, [~~each~~] a nonexempt employee shall obtain
137 authorization to work overtime from the employee's immediate supervisor.

138 (e) [~~Each~~] A department shall:

139 (i) for [~~employees~~] an employee who [~~elect~~] elects to be compensated with time off for
140 overtime, allow overtime earned during a fiscal year to be accumulated; and

141 (ii) for [~~employees~~] an employee who [~~elect~~] elects to be paid for overtime worked, pay
142 [~~them~~] the employee for overtime worked in the paycheck for the pay period in which the
143 employee worked the overtime.

144 (f) If the department pays a nonexempt employee for overtime, the department shall
145 charge that payment to the department's budget.

146 (g) At the end of [~~each~~] a fiscal year, the Division of Finance shall total [~~all~~] the
147 accrued overtime hours for nonexempt employees and charge that total against the appropriate
148 fund or subfund.

149 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), [~~each~~] a department shall
150 compensate [~~exempt employees~~] an exempt employee who [~~work~~] works overtime by granting
151 [~~them~~] the employee time off at the rate of one hour off for each hour of overtime worked.

(ii) The executive director of the Department of Human Resource Management may grant limited exceptions to ~~[this]~~ the requirement specified in Subsection (4)(a)(i), where work circumstances dictate, by authorizing a department to pay ~~[employees]~~ an employee for overtime worked at the rate per hour that the employee receives for nonovertime work, if the department has funds available.

(b) (i) ~~[Each]~~ A department shall:

(A) establish in its written human resource policies a uniform annual date for ~~[each division]~~ its divisions that is at the end of ~~[any]~~ a pay period; and

(B) communicate the uniform annual date to its employees.

(ii) If ~~[any]~~ a department fails to establish a uniform annual date as required by this Subsection (4), the executive director of the Department of Human Resource Management, in conjunction with the director of the Division of Finance, shall establish the date for that department.

(c) (i) ~~[Any overtime]~~ Overtime earned under this Subsection (4) is not an entitlement, is not a benefit, and is not a vested right.

(ii) A court may not construe the overtime for ~~[exempt employees]~~ an exempt employee authorized by this Subsection (4) as an entitlement, a benefit, or as a vested right.

(d) At the end of the overtime year, upon transfer to another department at any time, ~~[and]~~ or upon termination, retirement, or other ~~[situations]~~ situation where the employee will not return to work before the end of the overtime year:

(i) ~~[any of]~~ an exempt employee's overtime that is more than the maximum established by the Department of Human Resource Management rule lapses; and

(ii) unless authorized by the executive director of the Department of Human Resource Management under Subsection (4)(a)(ii), a department may not compensate the exempt employee for that lapsed overtime by paying the employee for the overtime or by granting the employee time off for the lapsed overtime.

(e) Before working ~~[any]~~ overtime, ~~[each]~~ an exempt employee shall obtain authorization to work overtime from the exempt employee's immediate supervisor.

(f) If the department pays an exempt employee for overtime under authorization from the executive director of the Department of Human Resource Management, the department shall charge that payment to the department's budget in the pay period earned.

(5) The Department of Human Resource Management shall:

(a) ensure that the provisions of the FLSA and this section are implemented throughout state government;

(b) determine, for each state employee, whether that employee is exempt, nonexempt, law enforcement, or has some other status under the FLSA;

(c) in coordination with modifications to the systems operated by the Division of Finance, make rules:

(i) establishing procedures for recording overtime worked that comply with FLSA requirements;

(ii) establishing requirements governing overtime worked while traveling and procedures for recording that overtime that comply with FLSA requirements;

(iii) establishing requirements governing overtime worked if the employee is "on call" and procedures for recording that overtime that comply with FLSA requirements;

(iv) establishing requirements governing overtime worked while an employee is being trained and procedures for recording that overtime that comply with FLSA requirements;

(v) subject to the FLSA, establishing the maximum number of hours that a nonexempt employee may accrue before a department is required to pay the employee for the overtime worked;

(vi) subject to the FLSA, establishing the maximum number of overtime hours for an exempt employee that do not lapse; and

(vii) establishing procedures for adjudicating appeals of any FLSA determinations made by the Department of Human Resource Management as required by this section;

(d) monitor departments for compliance with the FLSA; and

(e) recommend to the Legislature and the governor any statutory changes necessary because of federal government action.

(6) In coordination with the procedures for recording overtime worked established in rule by the Department of Human Resource Management, the Division of Finance shall modify its payroll and human resource systems to accommodate those procedures.

(a) Notwithstanding the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, Section 67-19-31, and Section 67-19a-301, any employee who is aggrieved by the FLSA designation made by the Department of Human Resource

Management as required by this section may appeal that determination to the executive director of the Department of Human Resource Management by following the procedures and requirements established in Department of Human Resource Management rule.

(b) Upon receipt of an appeal under this section, the executive director shall notify the executive director of the employee's department that the appeal has been filed.

(c) If the employee is aggrieved by the decision of the executive director of the Department of Human Resource Management, ~~he~~ the employee shall appeal that determination to the Department of Labor, Wage and Hour Division, according to the procedures and requirements of federal law.

Section 3. Section **67-19-12** is amended to read:

67-19-12. State pay plans -- Applicability of section -- Exemptions -- Duties of the executive director.

(1) (a) This section, and the rules adopted by the department to implement this section, apply to ~~each~~ a career ~~and~~ or noncareer employee not specifically exempted under Subsection (2).

(b) If not exempted under Subsection (2), an employee is considered to be in classified service.

(2) The following employees are exempt from this section:

(a) members of the Legislature and legislative employees;

(b) members of the judiciary and judicial employees;

(c) elected members of the executive branch and their direct staff who meet career service exempt criteria as defined in Subsection 67-19-15(1)(k);

(d) ~~certificated~~ employees of the State Board of Education;

(e) officers, faculty, and other employees of state institutions of higher education;

(f) employees in ~~any~~ a position that is determined by statute to be exempt from this Subsection (2);

(g) employees in the Office of the Attorney General;

(h) department heads and other persons appointed by the governor pursuant to statute;

(i) employees of the Department of Community and Culture whose positions are designated as executive/professional positions by the executive director of the Department of Community and Culture with the concurrence of the executive director;

(j) employees of the Governor's Office of Economic Development whose positions are designated as executive/professional positions by the director of the office; and

(k) employees of the Medical Education Council.

(3) (a) The executive director shall prepare, maintain, and revise a position classification plan for ~~each~~ an employee position not exempted under Subsection (2) to provide equal pay for equal work.

(b) Classification of positions shall be based upon similarity of duties performed and responsibilities assumed, so that the same job requirements and the same salary range may be applied equitably to each position in the same class.

(c) The executive director shall allocate or reallocate the position of ~~each~~ an employee in classified service to one of the classes in the classification plan.

(d) (i) The department shall conduct periodic studies and desk audits to provide that the classification plan remains reasonably current and reflects the duties and responsibilities assigned to and performed by employees.

(ii) The executive director shall determine the schedule for studies and desk audits after considering factors such as changes in duties and responsibilities of positions or agency reorganizations.

(4) (a) With the approval of the governor, the executive director shall develop and adopt pay plans for ~~each~~ a position in classified service.

(b) The executive director shall design ~~each~~ a pay plan to achieve, to the degree that funds permit, comparability of state salary ranges to salary ranges used by private enterprise and other public employment for similar work.

(c) The executive director shall adhere to the following in developing ~~each~~ a pay plan:

(i) ~~Each~~ A pay plan shall consist of sufficient salary ranges to permit adequate salary differential among the various classes of positions in the classification plan.

(ii) (A) The executive director shall assign ~~each~~ a class of positions in the classification plan to a salary range and shall set the width of the salary range to reflect the normal growth and productivity potential of employees in that class.

(B) The width of the ranges need not be uniform for all classes of positions in the plan, but ~~each~~ a range shall contain merit steps in increments of 2.75% salary increases.

(iii) (A) The executive director shall issue rules for the administration of pay plans.

(B) The rules may provide for exceptional performance increases and for a program of incentive awards for cost-saving suggestions and other commendable acts of employees.

(C) The executive director shall issue rules providing for salary adjustments.

(iv) ~~[Merit]~~ A step ~~[increases]~~ increase shall be granted, if funds are available, to ~~[employees]~~ an employee who ~~[receive]~~ receives a rating of "successful" or higher in an annual evaluation of ~~[their]~~ the employee's productivity and performance.

(v) By October 31 of each year, the executive director shall submit market comparability adjustments to the director of the Governor's Office of Planning and Budget for consideration to be included as part of the affected agency's base budgets.

(vi) By October 31 of each year, the executive director shall recommend a compensation package to the governor.

(vii) (A) Adjustments shall incorporate the results of a total compensation market survey of salary ranges and benefits of a reasonable cross section of comparable benchmark positions in private and public employment in the state.

(B) The survey may also study comparable unusual positions requiring recruitment in other states.

(C) The executive director may cooperate with other public and private employers in conducting the survey.

(viii) (A) The executive director shall establish criteria to assure the adequacy and accuracy of the survey and shall use methods and techniques similar to and consistent with those used in private sector surveys.

(B) Except as provided under Section 67-19-12.3, the survey shall include a reasonable cross section of employers.

(C) The executive director may cooperate with or participate in ~~[any]~~ a survey conducted by other public and private employers.

(D) The executive director shall obtain information for the purpose of constructing the survey from the Division of Workforce Information and Payment Services ~~[and shall include]~~, including employer name, number of persons employed by the employer, employer contact information ~~[and]~~, job titles, county code, and salary if available.

(E) The department shall acquire and protect the needed records in compliance with the

provisions of Section 35A-4-312.

(ix) The establishing of a salary range is a nondelegable activity and is not appealable under the grievance procedures of Sections 67-19-30 through 67-19-32, Title 67, Chapter 19a, Grievance and Appeal Procedures, or otherwise.

(x) The governor shall:

(A) consider salary adjustments recommended under Subsection (4)(c)(vi) in preparing the executive budget and shall recommend the method of distributing the adjustments;

(B) submit compensation recommendations to the Legislature; and

(C) support the recommendation with schedules indicating the cost to individual departments and the source of funds.

(xi) If funding is approved by the Legislature in a general appropriations act, the adjustments take effect on the July 1 following the enactment.

(5) (a) The executive director shall regularly evaluate the total compensation program of state employees in the classified service.

(b) The department shall determine if employee benefits are comparable to those offered by other private and public employers using information from:

(i) the most recent edition of the Employee Benefits Survey Data conducted by the U.S. Chamber of Commerce Research Center; or

(ii) the most recent edition of a nationally recognized benefits survey.

(6) (a) The executive director shall submit proposals for a state employee compensation plan to the governor by October 31 of each year, setting forth findings and recommendations affecting employee compensation.

(b) The governor shall consider the executive director's proposals in preparing budget recommendations for the Legislature.

(c) The governor's budget proposals to the Legislature shall include a specific recommendation on employee compensation.

Section 4. Section **67-19-15** is amended to read:

67-19-15. Career service -- Exempt positions -- Schedules for civil service positions -- Coverage of career service provisions.

(1) Except as otherwise provided by law or by rules and regulations established for federally aided programs, the following positions are exempt from the career service provisions

of this chapter:

(a) the governor, members of the Legislature, and all other elected state officers, designated as Schedule AA;

(b) appointed executives and board or commission executives enumerated in Section 67-22-2, and commissioners designated as Schedule AB;

(c) all employees and officers in the office and at the residence of the governor, designated as Schedule AC;

(d) employees who are in a confidential relationship to an agency head or commissioner and who report directly to, and are supervised by, a department head, commissioner, or deputy director of an agency or its equivalent, designated as Schedule AD;

(e) unskilled employees in positions requiring little or no specialized skill or training, designated as Schedule AE;

(f) part-time professional noncareer persons who are paid for any form of medical and other professional service and who are not engaged in the performance of administrative duties, designated as Schedule AF;

(g) employees in the Office of the Attorney General who are under their own career service pay plan under Sections 67-5-7 through 67-5-13, designated as Schedule AG;

(h) teaching staff of all state institutions and patients and inmates employed in state institutions, designated as Schedule AH;

(i) persons appointed to a position vacated by an employee who has a right to return under federal or state law or policy, designated as Schedule AI;

(j) noncareer employees compensated for their services on a seasonal or contractual basis who are hired for limited periods of less than nine consecutive months or who are employed on less than 1/2 time basis, designated as Schedule AJ;

(k) ~~those~~ employees in a personal and confidential relationship to elected officials, designated as Schedule AK;

(l) employees appointed to perform work of a limited duration not exceeding two years or to perform work with time-limited funding, designated as Schedule AL;

(m) employees of the Department of Community and Culture whose positions are designated as executive/professional positions by the executive director of the Department of Community and Culture with the concurrence of the executive director, and employees of the

Governor's Office of Economic Development whose positions are designated as executive/professional positions by the director of the office, designated as Schedule AM;

- (n) employees of the Legislature, designated as Schedule AN;
- (o) employees of the judiciary, designated as Schedule AO;
- (p) ~~aH~~ judges in the judiciary, designated as Schedule AP;
- (q) members of state and local boards and councils appointed by the governor and governing bodies of agencies, other local officials serving in an ex officio capacity, officers, faculty, and other employees of state universities and other state institutions of higher education, designated as Schedule AQ;

- (r) employees who make statewide policy, designated as Schedule AR;
- (s) any other employee whose appointment is required by statute to be career service exempt, designated as Schedule AS; ~~and~~

- (t) employees of the Department of Technology Services, designated as executive/professional positions by the executive director of the Department of Technology Services with the concurrence of the executive director, designated as Schedule AT[-]; and

- (u) employees of the State Board of Education, designated as schedule AU.

(2) The civil service shall consist of two schedules as follows:

- (a) (i) Schedule A is the schedule consisting of positions exempted by Subsection (1).
- (ii) Removal from ~~any~~ an appointive position under Schedule A, unless otherwise regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

- (b) Schedule B is the competitive career service schedule, consisting of all positions filled through competitive selection procedures as defined by the executive director.

(3) (a) The executive director, after consultation with the heads of concerned executive branch departments and agencies and with the approval of the governor, shall allocate positions to the appropriate schedules under this section.

- (b) ~~[Agency heads]~~ An agency head shall make ~~[requests]~~ a request and obtain approval from the executive director before changing the schedule assignment and tenure rights of ~~any~~ a position.

- (c) Unless the executive director's decision is reversed by the governor, when the executive director denies an agency's request, the executive director's decision is final.

- (4) (a) Compensation for employees of the Legislature shall be established by the

400 directors of the legislative offices in accordance with Section 36-12-7.

401 (b) Compensation for employees of the judiciary shall be established by the state court
402 administrator in accordance with Section 78-3-24.

403 (c) Compensation for officers, faculty, and other employees of state universities and
404 institutions of higher education shall be established as provided in Title 53B, Chapters 1,
405 Governance, Powers, Rights, and Responsibilities, and 2, Institutions of Higher Education.

406 (d) Unless otherwise provided by law, compensation for all other Schedule A
407 employees shall be established by their appointing authorities, within ranges approved by, and
408 after consultation with the executive director of the Department of Human Resource
409 Management.

410 (5) [~~All employees~~] Employees of the Office of State Auditor, the Office of State
411 Treasurer, and employees who are not exempt under this section are covered by the career
412 service provisions of this chapter.

413 Section 5. **Effective date.**

414 This bill takes effect on July 1, 2008.

Legislative Review Note
as of 10-15-07 9:21 AM

Office of Legislative Research and General Counsel

Fiscal Note**H.B. 255 - State Office of Education Human Resource Management
Amendments**

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
